

“Abusive Sports Governing Bodies – Hendry & Williams: Opinion”.

By Paul Harris
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The WPBSA is professional snooker’s world governing body. Virtually all professional players are members. It also organises/promotes most important tour events and sells the commercial rights. In this case a rival Tour sought to establish itself, with support from some leading players.

As ‘first mover’, the WPBSA holds a dominant position on the market for organisation/promotion of events. Certain of the WPBSA’s rules/practices failed to recognise its ‘special responsibility’ under competition law not to exploit or strengthen that position.

In particular, the High Court correctly concluded that a sanctioning rule, prohibiting WPBSA members from participating in non-WPBSA events without consent was abusive and unlawful. Such a rule unreasonably and unjustifiably foreclosed entry onto the event market of new entrants.

The Court should also have concluded that the bringing forward of the deadline for players to sign up to the following season’s tour was also abusive. It is another clear example of using an existing dominance to foreclose entry. It is not good enough to say that it was a legitimate and reasonable response to a competitive threat. That ignores the ‘special responsibility’ of dominant undertakings.

Likewise, the Court mis-analysed the rule of the WPBSA limiting the number of sponsorship logos permitted to be worn by players during tournaments. This is an example of a dominant undertaking (arguably) acting unreasonably in a closely related market. Such behaviour can be unlawful, and is something of which governing bodies with a dual governing and commercial role should be particularly aware – as FIA, the motor sports governing body, has also recently found out.

It is not sufficient justification for this logos rule that the BBC will not broadcast snooker, if the players are festooned with labels. If that were the case, any abusive obligation (for example the sanctioning rule, or the early application

deadline) could be justified, simply by reference to a contract with a third party.

Interestingly, though not argued, 'uniform' requirements may be reasonably justified by, even dominant, governing bodies. Are logos not part of playing attire?

Overall, the case is a useful eye-opener for governing bodies with dual governing and commercial roles. It is, however, also another reminder that there is a need for a specialist forum to decide competition cases.

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